

No: 48428-5-II
Jefferson County Superior Court No: 15-1-00194-4

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Petitioner,

v.

ANDREW PHILIP LINGLE,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR JEFFERSON COUNTY

The Honorable Keith Harper, Superior Court Judge

RESPONDENT'S BRIEF

BRET ROBERTS
Attorney for Respondent
LAW OFFICE OF BRET ROBERTS, PLLC
624 Polk Street
Port Townsend, WA 98368
(360)379-6991 - phone
(360)385-4012 – fax

TABLE OF CONTENTS

INTRODUCTION	1
ISSUES AND BRIEF ANSWERS TO ASSIGNMENTS OF ERROR... 1	
STATEMENT OF THE CASE.....	1-2
SUMMARY OF THE ARGUMENT	2-3
STANDARD OF REVIEW	3-4
ARGUMENT	4-11
I. The Superior Court Correctly Declined to Analyze the Case on the Basis of Defendant’s Constitutional Right to a Speedy Trial.	4-5
II. The Superior Court Correctly Dismissed the Case for Violation of The Speedy Trial Rule, CrR 3.3	5-11
A. Because the Execution Date of the Speedy Trial Waiver was its Commencement Date, the Speedy Trial Deadline was Correct and Dismissal was Required.....	6-7
B. The State is Estopped from Claiming a Speedy Trial Violation Because it Acquiesced To the Speedy Trial Deadline Established by Mr. Lingle’s Waiver	7-11
CONCLUSION	11-12
CERTIFICATE OF SERVICE.....	13

TABLE OF AUTHORITIES

WASHINGTON CASES

<i>Dept of Ecology v. Campbell & Gwinn, L.L.C.</i>	8
146 Wn.2d 1, 43 P.3d 4 (2002)	
<i>Dept of Ecology v. Theodoratus</i>	8
135 WN.2d 582, 957 P.2d 1241 (1998)	
<i>Mayer v. Sto Indust., Inc.</i>	4
156 Wn.2d 677, 132 P.3d 115 (2006)	
<i>Personal Restraint of Duncan</i>	3
167 Wn.2d 398, 219 P.3d 666 (2009)	
<i>Schoonover v. State</i>	7
116 Wn.App. 171, 64 P.3d 677 (2003)	
<i>State v. Earl</i>	5
97 Wn.App. 408, 984 P.2d 427 (1999)	
<i>State v. McDonald</i>	3
138 Wn.2d 680, 693, 981 P.2d 443 (1999)	
<i>State v. Nelson</i>	6
131 Wn.App. 108, 125 P.3d 1008 (2006)	
<i>State v. Ralph Vernon G</i>	5
90 Wn.App. 16, 950 P.2d 971 (1998)	
<i>State v. Ross</i>	10
98 Wn.App. 1, 981 P.2d 888 (1999)	
<i>State v. Tatum</i>	3
74 Wn.App. 81, 871 P.2d 1123 (1994)	

FEDERAL CASES

<i>Calderon v. Thompson</i>	11
523 U.S. 538, 118 S.Ct. 1489, 140 L.Ed.2d 728 (1998)	

<i>Thompson v. Calderon</i>	11
120 F.3d 1045 (9th Cir. 1997)	

RULES, STATUTES, AND OTHER AUTHORITIES

CrR 3.3.....	<i>passim</i>
--------------	---------------

ISSUES AND BRIEF ANSWERS TO ASSIGNMENTS OF ERROR

- I. Did the Superior Court Correctly Rule that the Constitutional Right to a Speedy Trial is Irrelevant?

YES. The superior court correctly disregarded Mr. Lingle's constitutional speedy trial right because Mr. Lingle argued for and obtained dismissal on the basis of the State's violation of CrR 3.3.

- II. Did the Superior Court Correctly Dismiss the Charge on the Basis of the State's Violation of Mr. Lingle's CrR 3.3 Right to a Speedy Trial?

YES. The State and Mr. Lingle agreed to a speedy trial deadline set forth in a waiver form provided by the superior court which was treated as having commenced on the date it was signed and filed; and the absence of the words "commencement date" did not affect how the waiver should be interpreted.

STATEMENT OF THE CASE

On July 28, 2015, the State filed an information against Andrew Lingle which alleged five criminal counts under case number 15-1-00105-7. (CP 8). The information was subsequently amended to add a sixth count on September 18, 2015. (CP 11). During the same September 18, 2015, hearing, the defendant filed a waiver of speedy trial. (CP 14). The clerk's minutes reflect that trial on the amended information was scheduled for December 14 and 15, 2015 at 9:00 a.m. (CP 15).

By order of the superior court, dated November 13, 2015, Count I from the September 18, 2015, amended information was severed. (CP 16) (12.4.15 VRP 2). At the pretrial hearing on December 4, 2015, the parties discussed trial dates for the counts remaining on the original information

and the single count which had been severed. (CP 17) (12.4.15 VRP 3). During this discussion, the parties observed that Mr. Lingle's deadline for speedy trial was December 17, 2015, based upon his waiver of speedy trial. (12.4.15 VRP 3, 6); (CP 14).

Following trial by jury on December 16, 2015, Mr. Lingle was found not guilty on the remaining counts of 15-1-00105-7. (CP 18). On December 17, 2015, the State filed an information under case number 15-1-00194-4 which contained the severed count from 15-1-00105-7 and an additional related count. (CP 1). Mr. Lingle filed a motion to dismiss on speedy trial grounds, and the superior court dismissed 15-1-00194-4 on January 8, 2016. The State filed its notice of appeal on January 12, 2016. (CP 4).

SUMMARY OF THE ARGUMENT

The Jefferson County Superior Court correctly dismissed the charges against Mr. Lingle based upon the State's violation of CrR 3.3. The State failed to bring him to trial on 15-1-00194-4 prior to the December 17, 2015, expiration of his speedy trial period.

The relevant speedy trial deadline was established when Mr. Lingle signed and filed a speedy trial waiver on September 18, 2015, which listed December 17, 2015, as the speedy trial deadline. The waiver "did not actually say 'commencement date.' However, it was signed on

September 18th, ninety days out from December 17th.” (1.8.16 VRP 24). The superior court correctly interpreted the day that the waiver was signed and filed as the commencement date and dismissed the charges. It also correctly disregarded the State’s voluminous and irrelevant analysis of the constitutional right to a speedy trial.

STANDARD OF REVIEW

The State’s brief did not propose a standard of review, but it appears that this Court should consider the matter *de novo*, because the issue presented is one of interpretation of a rule as applied to certain facts. “When a trial court bases an otherwise discretionary decision solely on the application of a court rule or statute to particular facts, the issue is one of law which is reviewed *de novo* on appeal.” *State v. Tatum*, 74 Wn.App. 81, 86, 871 P.2d 1123 (1994).

To the extent that this Court reviews the superior court’s factual determinations, it should use the more deferential abuse of discretion standard. “A trial court’s evidentiary rulings are reviewed for abuse of discretion.” *In re Personal Restraint of Duncan*, 167 Wn.2d 398, 403, 219 P.3d 666, 669 (2009) (citing *State v. McDonald*, 138 Wn.2d 680, 693, 981 P.2d 443 (1999)). “A trial court abuses its discretion if its decision is manifestly unreasonable or is based on ‘untenable grounds, or for untenable reasons.’” *Id.* (citing *Mayer v. Sto Indus., Inc.*, 156 Wn.2d

677, 684, 132 P.3d 115 (2006)). "A decision is based upon untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts." *Id.*

ARGUMENT

The Court should affirm dismissal of the charges on the basis of the State's violation of CrR 3.3. The State seeks to back out of the speedy trial deadline to which it initially agreed when Mr. Lingle used the superior court's own form to file a ninety day speedy trial waiver on September 18, 2015. Before the Court analyzes the waiver in the context of CrR 3.3, it should summarily dispense with the State's irrelevant constitutional speedy trial analysis.

I. The Superior Court Correctly Declined to Analyze the Case on the Basis of Defendant's Constitutional Right to a Speedy Trial

Mr. Lingle's trial counsel moved for dismissal on the basis of the State's violation of CrR 3.3; and the superior court granted relief on that basis.

COURT: From my standpoint we're dealing with the Speedy Trial Rule, 3.3. Whether or not that rule's been violated or will be violated. Because if the rule is violated then the remedy is dismissal. We're not to, as near as I can tell, we're not to (sic) whether or not his constitutional right would be violated. I think the issue simply is, is whether his Speedy Trial right under the Court rule is violated.

(1.8.16 VRP 2-3). Later, while rendering its oral decision dismissing the charge during the same hearing, the superior court said, “First of all, the constitutional right to a Speedy Trial is not an issue here at all.” (1.8.16 VRP 24).

The constitutional speedy trial analysis is unnecessary in this case because “[f]ailure to comply with the speedy trial rule requires dismissal, regardless of whether the defendant can show prejudice.” *State v. Earl*, 97 Wn.App. 408, 410, 984 P.2d 427 (1999) (citing *State v. Ralph Vernon G.*, 90 Wn.App. 16, 21-22, 950 P.2d 971 (1998)). This Court should disregard the State’s argument about the constitutional right to a speedy trial and uphold the superior court’s dismissal pursuant to CrR 3.3.

II. The Superior Court Correctly Dismissed the Case for Violation of the Speedy Trial Rule, CrR 3.3.

Using the form provided by the superior court, Mr. Lingle waived his speedy trial to specified future date which was exactly ninety days after the date the waiver was executed. (CP 14). This ninety day waiver comported with both the court rule and case law addressing commencement dates. Moreover, the State openly agreed to and relied upon the speedy trial deadline established by Mr. Lingle’s waiver. The superior court correctly ruled that the absence of the word “commencement date” on its long-used speedy trial waiver form did not

change the character of Mr. Lingle’s waiver of speedy trial; and it correctly dismissed the case because the State failed to bring Mr. Lingle to trial within the period established by CrR 3.3.

A. Because the Execution Date of the Speedy Trial Waiver was its Commencement Date, the Speedy Trial Deadline was Correct and Dismissal was Required.

A signed waiver sets a new “commencement” date. *State v. Nelson*, 131 Wn.App. 108, 113-14, 125 P.3d 1008 (2006) *review denied* 157 Wn.2d 1025 (2006) (citing CrR 3.3(c)(2)(i)).

That is, the waiver sets a new [speedy trial] period within which the trial date must be set. **The rule fixes this “commencement date” as the date the waiver is filed, unless the parties stipulate to a later commencement date.** By the plain language of the rule, however, the new trial period cannot begin earlier than the date when the waiver is filed.

Id. (citing CrR 3.3(c)(2)(i)) (emphasis added). Mr. Lingle’s speedy trial waiver was signed and filed on September 15, 2018. (CP 14). Under CrR 3.3(c)(2)(i), and *Nelson*, the commencement date is the date that the waiver form was filed. The deadline established by the waiver in this case was December 17, 2015, which was exactly ninety days after the date the waiver was executed and filed. (CP 14).

Mr. Lingle’s trial on the severed count was not held before the December 17, 2015, expiration of speedy trial. The superior court

observed that the State did not file a motion to invoke the cure period within the relevant five-day period after expiration of speedy trial. (1.8.16 VRP 27). Dismissal was the correct consequence of the State's failure to bring Mr. Lingle to trial within the time limits established by CrR 3.3. Aside from the operation of CrR 3.3, the State should be estopped from trying to proceed against Mr. Lingle after reversing its position regarding the effect of his speedy trial waiver.

B. The State is Estopped from Claiming a Speedy Trial Violation Because it Acquiesced to the Speedy Trial Deadline Established by Mr. Lingle's Waiver.

"Equitable estoppel may apply in a situation where one party makes an admission, statement, or act, which another party justifiably relies on to its detriment." *Schoonover v. State*, 116 Wn.App. 171, 179, 64 P.3d 677 (2003). It must be noted that "equitable estoppel against the government is disfavored and requires a showing that it is necessary to prevent a manifest injustice and that its application will not impair the exercise of government functions." *Id.* The essential elements of equitable estoppel are (1) an admission, act, or statement inconsistent with a later claim, (2) another party's reasonable reliance upon the admission, act, or statement, and (3) injury to the other party which would result if the first party is allowed to contradict or repudiate the earlier admission, act, or statement. *Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1,

20, 43 P.3d 4 (2002) (citing *Dept. of Ecology v. Theodoratus*, 135 Wn.2d 582, 599, 957 P.2d 1241 (1998)). Proof must be established by clear, cogent, and convincing evidence. *Id.*

Although generally disfavored, equitable estoppel is appropriate here because the State has reversed its position regarding the validity of the speedy trial waiver signed by Mr. Lingle on a form that was routinely used in Jefferson County Superior Court for over a decade since the relevant 2003 amendments to CrR 3.3. (1.8.16 VRP 26-27) (“...the point is, is everybody used that waiver of Speedy Trial form and relied on that and used it, and it’s never been raised as an issue, that I’m aware of, until now, other than the fact that we’ve changed the form here a number of weeks ago.”).

The State Represented its Agreement to the Speedy Trial Deadline

Michael Haas, the elected prosecutor, was present at the pretrial hearing discussing the speedy trial waiver. (12.4.15 VRP 1). The parties discussed the trial dates for the severed count and counts remaining on the original information. (12.4.15 VRP 2-3). Counts II-VII of the original information were set for trial on December 14 and 15, 2015, and the severed count, Count I, was set for trial at the same time, as a “backup.” (12.4.15 VRP 5). The superior court indicated on the record that, “if Count 1 does not go on [December 14 and 15], then Count 1 will have to

be reset for another time. And we'll need to deal with the Speedy Trial issue and any cure period, and so on, at that, at that point. Okay?" (12.4.15 VRP 5-6). The prosecutor responded by confirming on the record his understanding that the speedy trial waiver was through December 17. (12.4.15 VRP 6).

In its ruling dismissing the case on January 8, 2016, the superior court pointed out its belief that the parties had openly agreed upon the speedy trial deadline established by the waiver.

For all intents and purposes, and from my perspective, the understanding and intent of everybody in the courtroom at the time that was done that for purposes of any Speedy Trial rule September 18 was the commencement date and the expiration of the waiver of Speedy Trial was December 17th.

(1.8.16 VRP 24). The superior court further commented upon the State's apparent belief in the validity of the waiver as reflected by its failure to object to the speedy trial deadline established by the waiver.

[T]here was no mention at that, at that point of, oh well, don't worry, there's no commencement date in the September 18th waiver and so, gee, we're good out for another ninety days into February or March, or April, or whatever that takes us to. There was no suggestion of that.

(1.8.16 VRP 25). The superior court's own words, and the record, reveal that the State acquiesced to, or even ratified, the validity of the waiver by clear, cogent, and convincing evidence.

Mr. Lingle Relied Upon the State's Agreement to the Waiver Deadline

"Although the court is ultimately responsible for ensuring compliance with the speedy trial rule, the State is primarily responsible for bringing the defendant to trial within the speedy trial period." *State v. Ross*, 98 Wn.App. 1, 4, 981 P.2d 888 (1999). The State failed to object to the speedy trial deadline set forth in the waiver when it was filed on September 18, 2015; and, later, it openly agreed to the deadline established by the speedy trial waiver in the December 4, 2015, hearing. Mr. Lingle had no reason to believe that the State would subsequently seek to invalidate it. By openly assenting to the validity of the waiver, the State caused Mr. Lingle to pay no further heed to the matter until the State reversed its position and attempted to invalidate the waiver in its response to Mr. Lingle's motion to dismiss.

The State's Reversal Injured Mr. Lingle's Right to a Speedy Trial

When the Court considers the equities, it must be remembered that a prosecutor, "as an agent of the people and the State, has the unique duty to ensure fundamentally fair trials by seeking not only to convict, but also to vindicate the truth and to administer justice." *Thompson v. Calderon*,

120 F.3d 1045, 1058 (9th Cir. 1997) *overruled on other grounds in Calderon v. Thompson*, 523 U.S. 538, 118 S.Ct. 1489, 140 L.Ed.2d 728 (1998). “In bringing a defendant to trial, the right to a speedy trial imposes upon the prosecution a *duty of good faith and due diligence*.” *Ross*, 98 Wn.App. at 4. (emphasis added).

The State did not speak up regarding the absence of a commencement date on the waiver form when it was filed on September 18, and it appeared to acquiesce to, if not ratify, the speedy trial deadline set forth in the waiver during the December 4 hearing. It would be fundamentally unfair, and would injure Mr. Lingle’s right to fair administration of justice by a prosecutor acting in good faith if the State were permitted to reverse its position regarding the validity of the speedy trial deadline established by the September 18, 2015, waiver. The State should be equitably estopped from asserting that the speedy trial waiver was somehow invalid because it only evinced a belief in the invalidity of the waiver *after* it had violated the deadline established by the waiver.

CONCLUSION

The Court should affirm the superior court’s dismissal on the basis of the State’s violation of Mr. Lingle’s CrR 3.3 right to a speedy trial. The constitutional inquiry from the State’s opening brief is irrelevant and

should be disregarded because a violation of the speedy trial rule requires dismissal, regardless of the prejudice to the defendant. The speedy trial waiver at issue was valid because it was executed and filed on September 18, 2015, *exactly* ninety days before the December 17, 2015, deadline it set forth. In the superior court's own words, this Court should not be "overly attached to the omission of the term commencement date" on the superior court's own form—a form that had "been used for twelve years after the amendments to the rule in 2003 by two previous judges and all the visiting judges, and all the court commissioners..." (1.8.16 VRP 26). Mr. Lingle asks the Court to give force and effect to his valid waiver, and affirm the superior court's dismissal of the charges.

Respectfully Submitted this 29 day of August, 2016.

LAW OFFICE OF BRET ROBERTS, PLLC



BRET ROBERTS, WSBA No. 40628
Attorney for Respondent

PROOF OF SERVICE

I, Bret Roberts, certify that, on this date:

I filed Andrew Lingle's Brief of Respondent electronically with the Court of Appeals, Division Two, through the Court's online filing system.

I delivered an electronic version of the same through the Court's filing portal to:

Julian St. Marie
Deputy Prosecuting Attorney
jstmarie@co.jefferson.wa.us

I also hand-delivered a copy to the Jefferson County Prosecutor's Office mailbox in the Jefferson County Superior Court Clerk's Office.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Port Townsend, Washington, on August 29 2016.



Bret Roberts, WSBA 40628
Attorney for Andrew Lingle

JEFFERSON ASSOCIATED COUNSEL

August 29, 2016 - 4:04 PM

Transmittal Letter

Document Uploaded: 3-484285-Respondent's Brief.pdf

Case Name: State of Washington v. Andrew Lingle

Court of Appeals Case Number: 48428-5

Is this a Personal Restraint Petition? Yes ☐ No

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

☒ Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Bret A Roberts - Email: bretjacpd@gmail.com

A copy of this document has been emailed to the following addresses:

jstmarie@co.jefferson.wa.us